

§ 21.21

12 CFR Ch. I (1–1–11 Edition)

EFFECTIVE DATE NOTE: At 75 FR 75583, Dec. 3, 2010, § 21.11 was amended by revising paragraphs (b)(3), (c) introductory text, (k) and (l), effective Jan. 3, 2011. For the convenience of the user, the revised text is set forth as follows:

§ 21.11 Suspicious Activity Report.

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(b) * * *

(3) *SAR* means a Suspicious Activity Report.

(c) *SARs required.* A national bank shall file a SAR with the appropriate Federal law enforcement agencies and the Department of the Treasury on the form prescribed by the OCC and in accordance with the form's instructions. The bank shall send the completed SAR to FinCEN in the following circumstances:

* * * * *

(k) *Confidentiality of SARs.* A SAR, and any information that would reveal the existence of a SAR, are confidential, and shall not be disclosed except as authorized in this paragraph (k).

(l) *Prohibition on disclosure by national banks—(i) General rule.* No national bank, and no director, officer, employee, or agent of a national bank, shall disclose a SAR or any information that would reveal the existence of a SAR. Any national bank, and any director, officer, employee, or agent of any national bank that is subpoenaed or otherwise requested to disclose a SAR, or any information that would reveal the existence of a SAR, shall decline to produce the SAR or such information, citing this section and 31 U.S.C. 5318(g)(2)(A)(i), and shall notify the following of any such request and the response thereto:

(A) Director, Litigation Division, Office of the Comptroller of the Currency; and

(B) The Financial Crimes Enforcement Network (FinCEN).

(ii) *Rules of construction.* Provided that no person involved in any reported suspicious transaction is notified that the transaction has been reported, this paragraph (k)(1) shall not be construed as prohibiting:

(A) The disclosure by a national bank, or any director, officer, employee or agent of a national bank of:

(l) A SAR, or any information that would reveal the existence of a SAR, to the OCC, FinCEN, or any Federal, State, or local law enforcement agency; or

(2) The underlying facts, transactions, and documents upon which a SAR is based, including, but not limited to, disclosures:

(i) To another financial institution, or any director, officer, employee or agent of a fi-

ancial institution, for the preparation of a joint SAR; or

(ii) In connection with certain employment references or termination notices, to the full extent authorized in 31 U.S.C. 5318(g)(2)(B); or

(B) The sharing by a national bank, or any director, officer, employee, or agent of a national bank, of a SAR, or any information that would reveal the existence of a SAR, within the bank's corporate organizational structure for purposes consistent with Title II of the Bank Secrecy Act as determined by regulation or in guidance.

(2) *Prohibition on disclosure by the OCC.* The OCC will not, and no officer, employee or agent of the OCC, shall disclose a SAR, or any information that would reveal the existence of a SAR, except as necessary to fulfill official duties consistent with Title II of the Bank Secrecy Act. For purposes of this section, official duties shall not include the disclosure of a SAR, or any information that would reveal the existence of a SAR, in response to a request for use in a private legal proceeding or in response to a request for disclosure of non-public OCC information under 12 CFR 4.33.

(l) *Limitation on liability.* A national bank and any director, officer, employee or agent of a national bank that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this section or any other authority, including a disclosure made jointly with another financial institution, shall be protected from liability to any person for any such disclosure, or for failure to provide notice of such disclosure to any person identified in the disclosure, or both, to the full extent provided by 31 U.S.C. 5318(g)(3).

Subpart C—Procedures for Monitoring Bank Secrecy Act Compliance

§ 21.21 Procedures for monitoring Bank Secrecy Act (BSA) compliance.

(a) *Purpose.* This subpart is issued to assure that all national banks establish and maintain procedures reasonably designed to assure and monitor their compliance with the requirements of subchapter II of chapter 53 of title 31, United States Code, and the implementing regulations promulgated thereunder by the Department of Treasury at 31 CFR part 103.

(b) *Establishment of a BSA compliance program—(1) Program requirement.* Each bank shall develop and provide for the continued administration of a program

Comptroller of the Currency, Treasury

§ 22.2

reasonably designed to assure and monitor compliance with the recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code and the implementing regulations issued by the Department of the Treasury at 31 CFR part 103. The compliance program must be written, approved by the bank's board of directors, and reflected in the minutes of the bank.

(2) *Customer identification program.* Each bank is subject to the requirements of 31 U.S.C. 5318(1) and the implementing regulation jointly promulgated by the OCC and the Department of the Treasury at 31 CFR 103.121, which require a customer identification program to be implemented as part of the BSA compliance program required under this section.

(c) *Contents of compliance program.* The compliance program shall, at a minimum:

(1) Provide for a system of internal controls to assure ongoing compliance;

(2) Provide for independent testing for compliance to be conducted by bank personnel or by an outside party;

(3) Designate an individual or individuals responsible for coordinating and monitoring day-to-day compliance; and

(4) Provide training for appropriate personnel.

(Approved by the Office of Management and Budget under control number 1557-0180)

[52 FR 2859, Jan. 27, 1987, as amended at 68 FR 25111, May 9, 2003]

PART 22—LOANS IN AREAS HAVING SPECIAL FLOOD HAZARDS

Sec.

22.1 Authority, purpose, and scope.

22.2 Definitions.

22.3 Requirement to purchase flood insurance where available.

22.4 Exemptions.

22.5 Escrow requirement.

22.6 Required use of standard flood hazard determination form.

22.7 Forced placement of flood insurance.

22.8 Determination fees.

22.9 Notice of special flood hazards and availability of Federal disaster relief assistance.

22.10 Notice of servicer's identity.

APPENDIX A TO PART 22—SAMPLE FORM OF NOTICE OF SPECIAL FLOOD HAZARDS AND

AVAILABILITY OF FEDERAL DISASTER RELIEF ASSISTANCE

AUTHORITY: 12 U.S.C. 93a; 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

SOURCE: 61 FR 45702, Aug. 29, 1996, unless otherwise noted.

§ 22.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to 12 U.S.C. 93a and 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

(b) *Purpose.* The purpose of this part is to implement the requirements of the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001-4129).

(c) *Scope.* This part, except for §§ 22.6 and 22.8, applies to loans secured by buildings or mobile homes located or to be located in areas determined by the Director of the Federal Emergency Management Agency to have special flood hazards. Sections 22.6 and 22.8 apply to loans secured by buildings or mobile homes, regardless of location.

§ 22.2 Definitions.

(a) *Act* means the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001-4129).

(b) *Bank* means a national bank.

(c) *Building* means a walled and roofed structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, and a walled and roofed structure while in the course of construction, alteration, or repair.

(d) *Community* means a State or a political subdivision of a State that has zoning and building code jurisdiction over a particular area having special flood hazards.

(e) *Designated loan* means a loan secured by a building or mobile home that is located or to be located in a special flood hazard area in which flood insurance is available under the Act.

(f) *Director of FEMA* means the Director of the Federal Emergency Management Agency.

(g) *Mobile home* means a structure, transportable in one or more sections, that is built on a permanent chassis and designed for use with or without a permanent foundation when attached